

*Judgment of the Lords of the Judicial Committee
of the Privy Council, on the Appeal of Radha
Raman Shaha and Others v. Pran Nath Roy
and Others, from the High Court of Judicature
at Fort William, in Bengal, delivered 2nd
May 1901.*

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD ROBERTSON.

SIR RICHARD COUCH.

SIR FORD NORTH.

[*Delivered by Lord Hobhouse.*]

THEIR Lordships are all agreed that the preliminary objection cannot be sustained, and that the High Court were right in over-ruling it. We have nothing before us but the bare fact that the Plaintiff endeavoured to get an *ex parte* decree set aside under Section 108 of the Civil Code of Procedure, under which the Court may try whether the summons was served or whether the Plaintiff was prevented by any sufficient cause from appearing. We are not told what went on before the Court upon that occasion, and it is impossible to say that the matter now alleged as fraudulent matter came in any way before the Court under the application which was made by virtue of Section 108.

It seems to their Lordships that the High Court have taken an entirely right view of the matter, and they will humbly advise His Majesty that the Appeal ought to be dismissed. No Respondent having put in an appearance, there will be no costs.

